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**FISCAL IMPACT STATEMENT**

**LS 6371**

**BILL NUMBER:** HB 1074

**NOTE PREPARED:** Jan 25, 2008

**BILL AMENDED:** Jan 24, 2008

**SUBJECT:** Crimes Against Law Enforcement Officer.

**FIRST AUTHOR:** Rep. Soliday

**FIRST SPONSOR:**

**BILL STATUS:** 2<sup>nd</sup> Reading - 1<sup>st</sup> House

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) This bill has the following provisions:

- A. Disarming a Law Enforcement Officer – It makes it a Class C felony if a person knows that another person is a law enforcement officer or corrections officer and the person knowingly or intentionally takes or attempts to take a firearm or weapon from the officer or from the immediate proximity of the officer without the consent of the officer and while the officer is engaged in the performance of his or her official duties. It enhances this crime to a Class B felony if the officer is injured and a Class A felony if the officer dies or if the officer is injured and a firearm was taken. It allows a court to suspend only that part of a sentence that is in excess of the minimum sentence imposed on a person convicted of disarming a law enforcement officer.
- B. Killing a Law Enforcement Officer Acting in the Line of Duty – It requires a prosecuting attorney to seek a sentence of death against a person who: (1) kills a law enforcement officer acting in the line of duty; or (2) whose murder was motivated by an act the law enforcement officer performed in the line of duty. It provides that, in the trial of a person charged with killing a law enforcement officer in the line of duty or in retaliation for an official act of the law enforcement officer, a jury must recommend either a sentence of death or a sentence of life without parole if it finds that the state has proved that the defendant killed a law enforcement officer in the line of duty or in retaliation for an official act of the law enforcement officer.
- C. It makes conforming amendments.

**Effective Date:** July 1, 2008.

**Explanation of State Expenditures:** *Disarming a Law Enforcement Officer* – There are no data available

to indicate how many people may be convicted of disarming a law enforcement officer (a Class C felony), of disarming a law enforcement officer causing serious bodily injury (a Class B felony), or of a Class A felony if the officer dies or if a firearm is taken and the offense results in serious bodily injury to the officer.

Depending upon mitigating and aggravating circumstances, a Class C felony is punishable by a prison term ranging from 2 to 8 years, a Class B felony is punishable by a prison term ranging from 6 to 20 years, and a Class A felony is punishable by a prison term ranging from 20 to 50 years. The average length of stay in Department of Correction (DOC) facilities for all Class C felony offenders is approximately 2.0 years, Class B felony offenders is approximately 3.7 years, and for all Class A felony offenders is approximately 9.1 years.

For offenders convicted of disarming a law enforcement officer, the court may only suspend the part of a sentence that is in excess of the minimum sentence imposed. The minimum sentence for a Class C felony is 2 years, for Class B felony is 6 years, and for a Class A felony is 20 years. State expenditures would increase if an offender is incarcerated in a state prison for a longer period of time.

The average expenditure to house an adult offender was \$19,185 in FY 2007. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,138.

(Revised) *Murder Against a Law Enforcement Officer* – Under current law, the murder of a law enforcement officer is an aggravating circumstance which is eligible for filing a request for a death penalty. A mandated death penalty case when a law enforcement officer is killed in the line of duty would increase costs for the state General Fund.

State expenditures depend on the outcome of the criminal trial. If a prosecuting attorney requests the death penalty and the court imposes a death sentence on a defendant, then state expenditures will be less than when a prosecuting attorney seeks and the court imposes life imprisonment without parole. And a determinant sentence of 65 years where the offender is released after 32½ years for good behavior requires less expenditures than the other two sentences. However, the *combined* costs for the state agencies and county governments for a death penalty case, even when the offender is executed, exceeds the costs of a trial where the most serious sentence would be life without parole or a determinant sentence of 65 years.

*Background Information-* In the following analysis, LSA staff compared the costs that the state assumes for state assistance to the counties in the trial stage, and the staff costs during direct appeal, post-conviction relief, and federal habeas corpus review. The average age of 84 offenders who were sentenced to death was 30 at the time when a request for a death penalty was made against them.

LSA assumed that convicted offenders would:

- Spend an average period of 16 years on death row before being executed if the death penalty was imposed;
- Serve 32½ years of a sentence if sentenced to 65 years in prison since most offenders reduce their sentences by one day for each day that they comply with prison facility codes of behavior;
- Remain in DOC facilities until the age of 77 if sentenced to life without parole.

Because these costs occur at different points in time, a net present value was prepared for each cost stream

assuming an annual inflation rate of 5%. The following table presents the net present value of these costs.

<b>Post-Trial Costs to the State of Sentencing Options for a 30-Year-Old Offender Sentenced for Aggravated Murder</b>			
		<u>Net Present Value for:</u>	
<u>Sentence</u>	<u>Number of Years of Incarceration</u>	<u>State Expenditures</u>	<u>State and County Expenditures</u>
Death Penalty	16*	\$592,858	\$758,243
Life Without Parole	47	\$616,756	\$657,028
65 Years with 50% Credit Time	32.5	\$494,507	\$534,779
* Based on 15 offenders sentenced to death who appealed execution and were executed.			

The following variables are included in this analysis.

**Cost of Health Care** – It is assumed that the health care costs rise substantially in the later years of an offender's life. Consequently, the costs to the DOC will increase substantially for older offenders. The data in the following table was used to account for the added cost to DOC for the later years of an offender who is sentenced to life without parole.

<b>Estimated Costs of Health Care by Age Group</b>	
<u>Age Group</u>	<u>Estimated Cost</u>
18 - 24	\$ 1,095
25 - 44	\$ 1,844
45 - 64	\$ 4,319
over 65	\$ 8,589

**Cost of Incarceration** – The average annual expenditure for housing offenders (not including health care costs) is based on the average annual adult institution cost in FY 2006 of \$22,734 less the average annual health care costs shown in the table above.

**Added Costs for Financial Assistance At Trial** - The Public Defense Fund reimburses 50% of the authorized costs to counties when a death penalty trial is occurring and 40% when a noncapital case is being tried. The costs of a death penalty trial are higher because two attorneys are needed and two different trials occur.

The following shows the average costs incurred by the Public Defense Fund for death penalty and life without parole cases under current law. As proposed, the state General Fund would pay for the entire costs of indigent defense in a death penalty case but 40% if the prosecuting attorney seeks life without parole.

<b>Attorneys and Related Costs for Murder Trials</b>		
	<b><u>Death Penalty</u></b>	<b><u>Life Without Parole</u></b>
Under Current Law	\$107,804	\$27,370
Proposed	\$215,608	no change

Added Costs of Appeals - There are three general stages of review of criminal cases at the state and federal level: direct appeal and post-conviction relief at the state level and habeas corpus at the federal level. The Office of the Attorney General represents the state in all three stages of review in death penalty cases, and in direct appeal and habeas corpus if a determinate sentence is imposed. The State Public Defender's office represents convicted offenders requesting indigent counsel in post-conviction relief.

The following costs were used to compare the costs between these sentencing options.

<b>State Agency</b>	<b>Function</b>	<b>Death Penalty Trial</b>	<b>Life Without Parole</b>
State Public Defender	Represents convicted offenders requesting indigent counsel in post-conviction relief	\$191,182	\$3,724
Office of the Attorney General	Represents the state in all three stages of review in death penalty cases	\$72,503	\$12,004
Department of Correction	Execution costs and annual per diem and medical costs	\$20,588 for execution	Annual per diem and medical costs
State Police	Security and appeals at execution	\$4,012	

The following shows the stages of review once the death penalty trial has been completed.

<b>Review Level</b>	<b>Court of Review</b>	<b>Issues Permitted To Be Raised</b>
Direct Appeal	State Supreme Court	Defendant required to show that what happened at trial was legally erroneous. Defendant may not present new evidence.
Post-Conviction Relief (PCR)	Trial Court	Newly discovered evidence such as DNA and other issues may be presented.
Subsequent Appeal of PCR	State Supreme Court	Decides on the evidence presented at the PCR review.
Federal Habeas Corpus Review	Seventh Circuit Court of Appeals	Federal courts may not grant relief if the claim was waived in the state court or if the issue was not presented or properly presented in state court.

**Explanation of State Revenues:** *Disarming a Law Enforcement Officer* – If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase.

The maximum fine for all felony offenses is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$17), public defense administration fee (\$3), court administration fee (\$3), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

**Explanation of Local Expenditures:** (Revised) If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Under current law, the prosecuting attorney would not be able to request either the death penalty or life without parole unless one of 16 aggravating circumstances under IC 35-50-2-9 could be cited when a murder occurred.

***Background Information-*** Of the three possible sentencing options for murder, the death penalty is generally the most expensive for trial courts to conduct because two attorneys are required to represent the accused, and a bifurcated trial is conducted to determine guilt or innocence and whether a sentence of death is warranted. Life without parole is the next most expensive option because, while two attorneys are not required for legal representation, a bifurcated trial is also required to determine guilt or innocence and then whether a sentence of life without parole is warranted. Determinate sentencing of between 45 and 65 years is the least expensive option because one trial is conducted and two attorneys are not required to represent the defendant.

The following table summarizes the difference between these three options.

<b><u>Sentencing Option</u></b>	<b><u>Number of Defense Attorneys Needed</u></b>	<b><u>Type of Trial Conducted</u></b>
Death Penalty	Two	Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate.
Life Without Parole	One	Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate.
Determinate Sentence Between 45 and 65 Years	One	A single trial to determine guilt or innocence; a sentencing hearing is separate.

Consequently, the costs of legal representation for a case where the most serious sentence is between 45 and 65 years would likely be lower than the costs of a case involving life without parole.

No information is available on the costs of murder cases in which the most serious sentence was between 45 and 65 years of incarceration. However, at the request of the Criminal Law Study Commission, Legislative Services Agency staff compared the costs of death penalty cases and cases in which life without parole was the most serious outcome that could occur. The following table displays the cost components for a "typical" death penalty trial and a trial where life without parole is the most serious sentence. Under this bill, the state General Fund would pay the cost of appeals and the added costs for prosecuting attorneys.

Under this bill, if the prosecuting attorney seeks the death penalty, the state would pay for the entire costs of indigent defense, the added costs of the prosecuting attorney and the costs of appeals. In death penalty cases, the county would still be required to pay for the costs of any juries and the overtime costs for the sheriff's department. If the prosecuting attorney seeks life without parole, there would be no change in the way that the Public Defense Fund reimburses the county.

Cost Components for Murder Trials:				
		<u>Death Penalty</u>		<u>Life Without Parole</u>
To Be Paid by State General Fund	Attorneys and Related Costs*	\$107,804	Paid by Counties	\$27,370
	Cost of Appeals	\$54,355		\$5,466
	Prosecuting Attorney	\$2,340		\$2,948
	<b>Subtotal</b>	<b>\$164,499</b>		<b>\$35,784</b>
Paid by Counties	Jury and Related Costs	\$46,375		\$10,150
	County Sheriff	\$8,472		\$4,380
	<b>Subtotal</b>	<b>\$54,847</b>		<b>\$14,530</b>
	<b>Total Costs</b>	<b>\$219,346</b>		<b>\$50,314</b>
*Current Net Costs After Reimbursement From Public Defense Fund				

The cost of legal representation for a criminal defendant in a death penalty case is four times as expensive as the costs of a criminal trial in which the most serious sentence is life without parole. The costs of a trial where a determinate sentence is the most serious sentence is likely to be less than the costs of a trial in which life without parole is the most serious sentence.

**Explanation of Local Revenues:** *Disarming a Law Enforcement Officer* – If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

**State Agencies Affected:** DOC, Office of the Attorney General, Office of the State Public Defender, State Police.

**Local Agencies Affected:** Trial courts, local law enforcement agencies.

**Information Sources:** Indiana Sheriffs' Association, Indiana Supreme Court; *The Application of Indiana's Capital Sentencing Law, Findings of the Indiana Criminal Law Study Commission* (January 10, 2002); Website of Clark County (IN) Prosecuting Attorney, <http://www.clarkprosecutor.org/html/death/>; Agency for Healthcare Research and Quality, 2002 Full-Year Consolidated Data File (HC-070), Released December

2004. Medical Expenditure Panel Survey Household Component Data, Generated using MEPSnet/HC, <<http://www.meps.ahrq.gov/mepsnet/HC/MEPSnetHC.asp>>; Department of Correction.

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